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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 JOHN ROBERT DEMOS, JR.,

8 Plaintiff,

9 v.

10 STATE OF WASHINGTON,

11 Defendant.

C22-102 TSZ

ORDER

12 THIS MATTER comes before the Court on the Report and Recommendation
13 (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, docket
14 no. 2. Having reviewed the R&R and Petitioner’s objections, docket no. 3, the Court
15 enters the following Order.

16 **Discussion**

17 Petitioner John Demos, Jr., a state prisoner, filed a motion for leave to proceed *in*
18 *forma pauperis* (“IFP”), docket no. 1, and a proposed “petition for a writ of certiorari,”
19 docket no. 1-1. Although the Clerk docketed the petition as a proposed complaint under
20 42 U.S.C. § 1983, Petitioner challenges only the validity of his state conviction. *See*
21 Docket no. 1-1. The R&R concludes that docket no. 1-1 must be construed as a petition
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1 for a writ of habeas corpus under 28 U.S.C. § 2254. Docket no. 2 at 2. Petitioner is
2 under pre-filing bar orders in multiple courts, including this Court. *See, e.g., Demos v.*
3 *Storrie*, 507 U.S. 290, 290–91 (1993). An Order of this Court provides for the return
4 without filing of any petition that seeks an extraordinary writ pursuant to 28 U.S.C.
5 §§ 1651, 2253 or 2254, unless accompanied by the requisite filing fee. *See Demos v.*
6 *Stanley*, MC97-0031-JLW (W.D. Wash. Mar. 13, 1997).

7 The Court has carefully considered Petitioner’s objections to the R&R, docket
8 no. 3. Petitioner challenges the constitutionality of the pre-filing bar order, but he does
9 not contest the R&R’s conclusion that he seeks a writ of habeas corpus pursuant to
10 28 U.S.C. § 2254. The Court agrees with the R&R that Petitioner’s purported complaint
11 is properly construed as a petition for a writ of habeas corpus. Therefore, Petitioner
12 improperly filed his § 2254 petition because he did not pay the filing fee.

13 **Conclusion**

14 For the foregoing reasons, the Court ORDERS:

15 (1) The Report and Recommendation, docket no. 2, is ADOPTED. The
16 proposed petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, docket no. 1-
17 1, is DISMISSED without prejudice.

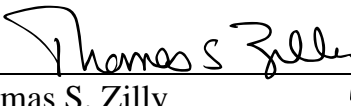
18 (2) Petitioner’s motion to proceed IFP, docket no. 1, is DENIED as moot.

19 (3) A certificate of appealability is DENIED.

20 (4) The Clerk is directed to CLOSE this case and to send a copy of this Order
21 to all counsel of record, to petitioner pro se, and to Judge Creatura.

1 IT IS SO ORDERED.

2 Dated this 9th day of March, 2022.

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4 Thomas S. Zilly
5 United States District Judge
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